

No. PD-0020-21
In the Court of Criminal Appeals
At Austin

—◆—
No. 01-19-01008-CR
In the Court of Appeals
For the First District of Texas
At Houston

—◆—
No. 2012280
In the County Criminal Court at Law No. 12
of Harris County, Texas
—◆—

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THE STATE OF TEXAS
Appellant
v.
LAKESIA KEYON BRENT,
Appellee

—◆—
STATE'S BRIEF ON DISCRETIONARY REVIEW
—◆—

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ORAL ARGUMENT NOT GRANTED

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.2(a)(1)(A), below is a complete list of the names of all interested parties.

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Trial Judge:

Honorable Robin Brown – Judge presiding at trial and discharge

Honorable Genesis Draper – Judge presiding at clemency hearing

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STATEMENT ON ORAL ARGUMENT

In granting review of the State's petition this Court did not granted oral argument.

TO THE HONORABLE COURT OF APPEALS:
STATEMENT OF THE CASE AND FACTS

The facts necessary for the resolution of this purely legal issue are largely procedural. As such, the Statements of the Case and Facts will be consolidated. This case concerns the jurisdiction for a trial court to grant “judicial clemency” under art. 42A.701(f).¹

On Feb. 27, 2015, Appellee was charged by criminal information with the misdemeanor offense of theft, which occurred on or about Feb. 17, 2015. (C.R. 06). The underlying facts of the theft are contained only in the affidavit supporting Appellee’s arrest warrant. (C.R. 07). Essentially, while a patient at a clinic, Appellee stole a cell phone belonging to another patient. *Id.* On March 13, 2016, a petit jury found Appellee guilty of the offense. (C.R. 46).

On March 04, 2016, the trial court sentenced Appellee to 180 days in the Harris County Jail but suspended that sentences for a period of one year and placed Appellee under community supervision. (C.R. 48). One year later, on March 22, 2021⁷, after the supervision period expired, the trial court discharged Appellee. (C.R. 53). Appellee did not appeal the conviction, sentence, or discharge.

Over two-and-a-half years after discharge, Appellee moved for the trial court to

¹ The term “judicial clemency” is not found in the statute, but is instead a common way to refer to the type of discharge and dismissal granted under art. 42A.701(f). As such, when this brief refers to “judicial clemency” it is referring to the type of discharge and dismissal granted under art. 42A.701(f).

grant judicial clemency pursuant to art. 42A.701(f).² (C.R. 55-57). On Nov. 19, 2019, the trial court granted Appellee's motion, set aside the jury's verdict, released Appellee's from any further penalties and disabilities related to the conviction, and dismissed the charging instrument. (C.R. 67). The trial court ordered the dismissal of the case and information. (C.R. 69-70). On Dec. 03, 2019, the State gave notice of its intent to appeal. (C.R. 73-74).³

On Dec. 10, 2020, the First District Court of Appeals released an opinion affirming the trial court's dismissal. *State v. Brent*, 615 S.W.3d 667, 676 (Tex. App.—Houston [1st Dist.] 2020, pet. granted). The court of appeals overruled the State's two points of error: that the trial court did not have continuing jurisdiction to grant clemency, and that Appellee did not receive the type of discharge that was eligible for clemency. *Id.* 674-76. The court of appeals put itself in direct opposition to five other courts of appeals on the issue of jurisdiction. *See, State v. Perez*, 494 S.W.3d 901 (Tex. App.—Corpus Christi-Edinburg 2016, no pet.); *State v. Shelton*, 396 S.W.3d 614 (Tex. App.—Amarillo 2012, pet. ref'd); *State v. Fielder*, 376 S.W.3d 784 (Tex. App.—Waco 2011, no pet.); *Poornan v. State*, No. 05-18-00354-CR, 2018 WL 6566688 (Tex. App.—Dallas, Dec. 13, 2018, no pet.) (mem. op., not designated for publication); *Buie v. State*, No. 06-13-00024-CR, 2013 WL 5310532 (Tex. App.—

² In addition to a lack of subsequent convictions, Appellee claimed that she had been a successful business owner for 12 years and had a 17-year-old daughter, with whom Appellee was actively involved. (C.R. 56-57). Based on her claim, both would have been true at the time of the offense.

³ The order dismissed the information, allowing for appeal under TEX. CODE CRIM. P. Art. 44.01(a)(1).

Texarkana Sept. 20, 2013, no pet.)(mem. op., not designated for publication).

The court of appeals started by recognizing that every other court of appeals that has decided this issue has found that jurisdiction extends, at most, 30 days after final conviction or discharge. *Id.* at 673-74 (citing to cases from the 5th, 6th, 7th, 10th, and 13th districts finding plenary power expired after 30 days). The court of appeals then went on to hold that each of those courts incorrectly interpreted art. 42A.701. *Id.* The court of appeals found that there was no language limiting the jurisdiction of a trial court to grant judicial clemency. *Id.* (“This conditional language establishes when a trial court’s power to grant judicial clemency *arises*...but it says nothing about when the trial court’s power *expires*)(emphasis in original). The court of appeals found that the absence of a limitation meant that jurisdiction was granted. *Id.* at 674 (“But to limit the trial court’s authority to consider application for judicial clemency to that period of time immediately concurrent to a mandatory discharge of a defendant within thirty days of the successful completion of community supervision is to read a limitation into the statute that simply is not there”)(quoting *Shelton*, 396 S.W.3d at 621 (Tex. App.—Amarillo 2012, pet. ref’d)(Pirtle, J., dissenting)). The court of appeals also found that the “public policy purpose of judicial clemency” demonstrated jurisdiction. *Id.* at 675-74 (finding “the purpose of judicial clemency” is to relieve defendants who have been rehabilitated, and that rehabilitation is best evaluated on post-discharge conduct).

The court of appeals also rejected the argument that Appellee’s discharge was not

eligible for clemency because it was not granted under 42A.701.⁴ *Id.* at 675-76. The court of appeals found that the only limitations on eligibility were the types of offenses prohibited from early termination listed in 42A.701(g). *Id.* at 675-76. The court of appeals held that all supervisions, regardless of their resolution, are eligible for clemency if the offense was not listed in 42A.701(g). *Id.*

⁴ The Appellee raised a preservation claim to this issue. *Id.* at 675. The court of appeals assumed that the issue was preserved and addressed the merits of the claim. *Id.*

GROUND FOR REVIEW

- I. The Court of Appeals for the First District erred when it found, contrary to five other courts of appeals, that a trial court maintains unending jurisdiction over community supervision cases to grant “judicial clemency.”
- II. The Court of Appeals for the First District erred when it found that all terminated community supervisions, regardless of the conditions under which they were completed, are eligible for “judicial clemency” where the statute restricts the granting of judicial clemency only to those terminations that occur pursuant to the statute.

SUMMARY OF THE ARGUMENT

The court of appeals erred in affirming the trial court's order setting aside Appellee's conviction and dismissing the information. The trial court was without jurisdiction, over two years after discharge, to grant clemency; the court of appeals erred in finding there was no jurisdictional limitation in the judicial clemency statute and that the trial court retained jurisdiction. The court of appeals also erred when it speculated that the rehabilitative policy of judicial clemency granted jurisdiction.

The court of appeals further erred when it found that Appellee was eligible for judicial clemency. The judicial clemency statute is only applicable to supervision discharges done pursuant to that article. Discharge under that article requires that a defendant satisfactorily fulfill the terms and conditions of supervision. The record does not support that Appellee's discharge was done under that article.

STATE'S FIRST CLAIM OF ERROR

The First District Court of Appeals erred when it found that trial courts have unlimited time to grant judicial clemency after discharge. To do so, the court of appeals incorrectly interpreted the statute. The court of appeals also incorrectly turned to policy in order to make its determination without first determining that there was an ambiguity in the statute. This Court should find that the court of appeals erred and should correct that error.

A. Applicable law and standards of review

Jurisdiction is “the power of a court to hear and determine a case.” *State v. Robinson*, 498 S.W.3d 914, 917 (Tex.Crim. App. 2016). Jurisdiction over a case is “an absolute systemic requirement.” *State v. Dunbar*, 297 S.W.3d 777, 780 (Tex. Crim. App. 2009). A trial court’s jurisdiction over a case consists of “the power of the court of the ‘subject matter’ of the case, conveyed by statute or constitutional provision, coupled with ‘personal’ jurisdiction over the accused...” *Id.* Without jurisdiction a court has no power to act. *Id.*; *c.f.*, *Ex parte Seidel*, 39 S.W.3d 221, 224 (Tex. Crim. App. 2001)(order issued without jurisdiction is void and may be collaterally attacked).

“After a trial court imposes a sentence in open court and adjourns for the day, it loses plenary power to modify the sentence unless, within thirty days, the defendant files a motion for new trial or a motion in arrest of judgment.” *Robinson*, 498 S.W.3d at 919. “[B]eyond that thirty-day period, a source of jurisdiction must be found to authorize the

trial court's orders.” *Dunbar*, 297 S.W.3d at 780 (internal quotations omitted); *c.f.*, *Robinson*, 498 S.W.3d at 917 (“The standard for determining jurisdiction is not whether the appeal is precluded by law, but whether the appeal is authorized by law”).

Art. 42A.701 concerns the “reduction or termination of community supervision period.” TEX. CODE CRIM. P. Art. 42A.701. The article contains the mechanism and authority that allows a trial court to grant judicial clemency. *Id.* at (f). Subsection (f) states:

If the judge discharges the defendant under this article, the judge may set aside the verdict or permit the defendant to withdraw the defendant's plea. A judge acting under this subsection shall dismiss the accusation, complaint, information, or indictment against the defendant. A defendant who receives a discharge and dismissal under this subsection is released from all penalties and disabilities resulting from the offense of which the defendant has been convicted or to which the defendant has pleaded guilty...

Id. Subsection (f-1) mandates that the Office of Court Administration (“OCA”) create standardized forms for discharge under subsection (f). *Id.* at (f-1). Subsection (g) makes certain crimes – inapplicable here – ineligible for early discharge under the article. *Id.* at (g).

B. The statute does not, sub silentio, imbue trial courts with unlimited jurisdiction over a criminal case

The court of appeals found that there was no limitation on a trial court's ability to grant judicial clemency. To do so, the court of appeals claimed that the structure, text and purpose of the statute pointed towards no time limitation *Brent*, 615 S.W.3d at 674-

75. And in doing so, the court of appeals put itself in direct opposition to each of the other courts of appeals that has reviewed the issue. *See, Perez*, 494 S.W.3d at 905; *Shelton*, 396 S.W.3d at 619; *Fielder*, 376 S.W.3d at 784-85; *Poornan*, 2018 WL 6566688, at *02; *Buie*, 2013 WL 5310532, at *02.

The court of appeals claimed that the statute's structure indicated that there was no time limitation on a trial court's plenary power to grant judicial clemency. *Id.* But, the court of appeals did not analyze the statute's structure or explain how it indicated that there was no limitation. Instead, as far as the language of the statute is concerned, the court of appeals found it compelling that there was no explicit limitation on the time to grant judicial clemency. *See, Id.; contra, Robinson*, 498 S.W.3d at 626 (finding court of appeals erred by finding "there was no statute or rule precluding appeal" when the analysis is not whether an appeal precluded by law but is whether appeal is authorized by law). Both the structure and the text of the statute indicate that the power to grant judicial clemency is limited to that time when the trial court discharges the defendant – or, at most, during the 30 day period during which the court retains plenary power.

The statute generally deals with what allows a trial court to order a discharge or early discharge, and what to do when ordering the discharge. The reasoning of the court of appeals excepts subsection (f) from the statute as something to be done at some unknown point after discharge. This is inconsistent with the remainder of the statute, which deals with what to do during the time of discharge or early termination.

Further, the language of subsection (f) ties the grant of judicial clemency to a discharge. Specifically, the first sentence of subsection (f) states “If the judge discharges the defendant under this article, the judge may set aside the verdict...” TEX. CODE CRIM. P. Art. 42A.701(f). Another portion of the statute mandates a court, upon successful completion of probation conditions, to simultaneously reform the sentence and discharge a defendant. *Id.* at (e). These, taken together, indicate that a court may grant clemency at the time of discharge, or perhaps during its plenary power period, but not afterwards. *C.f.*, *Shelton*, 396 S.W.3d at 617-18 (finding same).

Finally, the language of subsection (f-1) further shows that discharge and clemency are to occur at the same time. Subsection (f-1) directs the OCA to adopt a form that “provide[s] for the judge to” either “discharge the defendant,” or “discharge the defendant, set aside the verdict...” TEX. CODE CRIM. P. Art. 42A.701(f-1). In doing so, the Legislature has tied the decision to grant judicial clemency to the discharge of the supervision. Appellee’s discharge form reflects this, as there are two sections available to indicate a discharge and dismissal – neither of which are marked.⁵ (C.R. 53). Notably, subsection (f-1) does not indicate that any determination of satisfactory completion or fulfillment will be used for some future discharge years down the road.

In finding that there was no time limit on the grant of judicial clemency, the court

⁵ The judge that discharged the Appellee – the same judge presiding over the jury trial and who supervised the Appellee, and who was in the best position to judge Appellee’s conduct while supervised – did not believe Appellee should receive judicial clemency. (C.R. 53).

of appeals has imbued trial courts with unending jurisdiction – a thing unmatched in any other context. The court of appeals found the lack of an explicit limitation indicated that there was no limitation. *Brent*, 615 S.W.3d at 674 (the conditional language of subsection (f) states when a trial court’s power to grant judicial clemency *arises*...but it says nothing about when the trial court’s power *expires*”(emphasis in original). That is, the statute’s silence about any time limitation, the court of appeals reasoned, meant that there was no limitation. *Id.* (“to limit the trial court’s authority [to grant judicial clemency]...is to read a limitation into the statute that simply is not there”)(quoting *Shelton*, 396 S.W.3d at 621 (Pirtle, J., dissenting)).

The court of appeals ignored that continuing jurisdiction is not the norm; a court’s plenary power has limitations. *See, Robinson*, 498 S.W.3d at 919. Indeed, if the lack of statutory limitation granted unlimited jurisdiction, then the entire concept of plenary power would be unnecessary. The Legislature knows how to extend a court’s jurisdiction to act on a case once judgment has been rendered. *See, e.g., TEX. CODE CRIM. P. Arts. 42A.201 & 42A.202* (extending jurisdiction for courts to grant “shock probation” in misdemeanor and felony cases). The fact that the Legislature did not include a time limitation does not indicate there is no time limitation; instead, the fact that the Legislature did not include a time *extension* indicates that there is a limitation. *See, State v. Patrick*, 86 S.W.3d 592, 595 n.13 (Tex. Crim. App. 2002)(rejecting a defendant’s claim of continuing jurisdiction to grant DNA testing outside of Chapter 64 because of lack of legislative grant,

and listing statutes where legislature has granted continuing jurisdiction). Neither the text nor the structure grant jurisdiction – if statutory structure can even grant jurisdiction.

C. The court of appeals’ policy argument is flawed and ignores the equally compelling policy arguments limiting judicial clemency to discharge

The chief reasoning that the court of appeals gave for its opinion was that the public policy behind judicial clemency favored no limitation. *See, Brent*, 615 S.W.3d at 674-75 (“More importantly, the creation of such a limitation is inconsistent with the public policy purpose of judicial clemency altogether”)(internal quotations omitted).⁶ However, before courts may imbue their own public policy determinations onto the Legislature’s words, there must be an ambiguity in the language and an inevitable absurd result. *See, Boykin v. State*, 818 S.W.2d 782, 785-86 (Tex. Crim. App. 1991)(where plain meaning of statute is clear, it is not for courts to add or subtract to its language; it is only when the language is ambiguous and would lead to absurd results that it is constitutionally permissible to interpret meaning into a statute).

The language of 42A.701 is only ambiguous if every statute the Legislature passed required a statement on how long a court’s jurisdiction lasted post-judgment. That is not the case. It is the very rare exception, not the rule, for statutes to contain a statement extending a court’s jurisdiction after completion of a case. *See, e.g., Patrick*, 86 S.W.3d at 595

⁶ The clarity of the passage of time often gives much more information, not just in clemency cases. If the court of appeals’ reasoning is adopted – that more post-judgment information is helpful for decisions, and therefore jurisdiction should be granted – then other areas will be impacted.

n.13 (listing handful of statutes that extend jurisdiction). Without language extending jurisdiction, the default is a limited period of plenary power – generally 30 days. *See, Dunbar*, 297 S.W.3d at 780 (“Consequently, beyond that thirty-day period, a source of jurisdiction must be found to authorize the trial court’s orders”)(internal quotations omitted). The court of appeals supplanted its own policy determinations for the Legislature’s before it was necessary.

Even assuming the lack of jurisdiction language in the statute creates an ambiguity, it would not be absurd to tie the decision to grant clemency to the discharge. The court of appeals reasoned that judicial clemency was a form of relief for defendants who are “completely rehabilitated.” *Brent*, 615 S.W.3d at 674-75. The court of appeals then went on to decide that “the best evidence of rehabilitation will often be the defendant’s conduct post-discharge, when the defendant is no longer under direct supervision and threat of revocation.” *Id.* However, the reasons to require a trial court to make its clemency decision at the time of discharge are also compelling.

At the time of discharge, the trial court has the greatest amount of information about a defendant’s rehabilitation. By the time of discharge the trial court would have been monitoring a defendant for a long period of time. The trial court would know the advances or regression that a defendant made in his or her rehabilitation. It is at this point that the trial court would be in the best position to make a decision. Once a defendant is discharged from community supervision, the trial court has no way to monitor him or her.

The State, for that matter, has very little way to monitor him or her and make an informed decision of whether to oppose or agree with clemency.⁷

Due to the lack of supervision, the decision practically distills down to whether the defendant has, since discharge, been caught for a criminal offense. That is the case here. The Appellee's lack of subsequent criminal history in the roughly two years since discharge was essentially the only evidence that changed between discharge and clemency.⁸ And that would be the same in almost every case brought well-after discharge. But if the Legislature wanted that to be the deciding factor, as it was here, it could have made that a requirement of the statute. The Legislature may, in its discretion, decide that all discharged supervisions are eligible for judicial clemency after some period of time where there are no subsequent convictions. But the Legislature did not do that. And there is no reason to believe that it secretly wanted that to be the case.

Conversely, the "carrot" of judicial clemency is also a powerful motivator for a defendant to truly embrace and excel the terms and conditions of a community supervision. If a defendant knows that the decision to grant clemency is tied to his performance while under supervision, a defendant is incentivized to complete the

⁷ By divorcing the discharge from clemency, the court of appeals' opinion allows clemency to be granted without notice to the State. The statute only requires notice when the court is discharging a defendant under the article. TEX. CODE CRIM. P. Art. 42A.701(c).

⁸ As noted above, the Appellee claimed that she was a mother to a 17-year-old daughter and a business owner for 12 years. (C.R. 56-57). Both of these claims would have been true at the time of her offense four years earlier and her discharge.

requirements and refrain from reoffending or failing his or her conditions. Moreover, a defendant is incentivized to demonstrate extraordinary compliance with supervision in order to demonstrate suitability for clemency. If, on the other hand, a defendant knows that clemency is available after being free from judicial supervision – and thus, judicial scrutiny – then the incentive to comply with conditions is decreased.⁹

On a more practical level, it is particularly disturbing when a court can grant itself something as fundamental jurisdiction by divining the tea leaves of the always- amorphous “public policy.” Without jurisdiction, a court is powerless to act. *Patrick*, 86 S.W.3d at 595. “[A] source of jurisdiction must be found to authorize [a] trial court’s orders.” *Id.* That “source” of a court’s jurisdiction cannot be the *ipsit dixit* of the same court that is granting itself jurisdiction. The court of appeals erred in finding otherwise.

⁹ The Appellee, for example, did not satisfactorily complete her terms and conditions of probation. Instead, the Appellee was discharged because her period of supervision had ended. (C.R. 53)(noting “The period having expired, defendant is discharged by operation of law,” and not indicating any in any fields that Appellee had satisfactorily completed her terms and conditions).

STATE’S SECOND CLAIM OF ERROR

The court of appeals also erred by finding that the Appellee’s supervision was eligible for judicial clemency. *Brent*, 615 S.W.3d at 675-76. The court of appeals ignored the language of the statute requiring that judicial clemency may only be granted on cases discharged pursuant to art. 42A.701. Appellee’s supervision was not eligible for judicial clemency under art. 42A.701(f) because her supervision was neither early terminated nor satisfactorily completed.

A. Applicable law and standard of review

Art. 42A.701 governs the “Reduction or Termination of Community Supervision Period.” TEX. CODE CRIM. P. Art. 42A.701. Subsections (a) allows a court to early terminate a defendant’s supervision. *Id.* at (a). Subsection (e) mandates a trial court to terminate a defendant’s supervision if the terms are satisfactorily completed *and* the duration of the supervision has ended. *Id.* at (e) . Subsections (a) and (e) are the only methods of discharge under art. 42A.701.¹⁰ Subsection (f) provides the mechanism and authority for trial courts to grant judicial clemency. *Id.* at (f). Subsection (f) begins by stating “If the judge discharges the defendant *under this article...*” *Id.* (emphasis added). Subsection (g) lists offenses that are exempt from art. 42A.701. *Id.* at (g) .

¹⁰ Subsection (b) mandates the time when a court shall consider whether to early terminate a defendant or not. TEX. CODE CRIM. P. Art. 42A.701(b) . Subsection (c) mandates that the court give the State notice before early terminating a defendant’s supervision. *Id.* at (c) . Subsection (d) concerns notice to be given to a defendant if the judge determines the conditions have not been satisfactorily fulfilled. *Id.* at (d) .

In interpreting statutes, courts seek to “effectuate the collective intent or purpose of the legislator’s who enacted the legislation.” *Boykin*, 818 S.W.2d at 875 (internal quotation marks omitted). The “literal text” of the statute is the best indication of the “collective intent.” *Id.* This is because the literal text “is the only thing actually adopted by the legislators” and is “the only *definitive* evidence of what the legislators (and perhaps the Governor) had in mind when the statute was enacted into law.” *Id.*

Appellate courts “should afford almost total deference to a trial court’s determination of the historical facts that the record supports especially when the trial court’s fact findings are based on an evaluation of credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). An appellate court may imply factual findings where necessary to support the judgment. *Gutierrez v. State*, 221 S.W.3d 680, 667 (Tex. Crim. App. 2007)(implying a finding to support a trial court’s denial of a motion to suppress). However, that implied finding must be rooted and supported in the record. *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000).

B. Appellee’s supervision was not discharged under 42A.701 and was ineligible for judicial clemency

Appellee was discharged from her community supervision by the natural expiration of her supervision period. (C.R. 53)(finding “[t]he period having expired, defendant is **discharged** by operation of law”)(emphasis in original). Appellee was not satisfactorily discharged under art. 42A.701. Clemency under art. 42A.701(f) is limited to discharges “under 42A.701.” TEX. CODE CRIM. P. Art. 42A.701(f).

Despite this, the court of appeals found that Appellee's discharge was eligible for clemency under art. 42A.701(f). *Brent*, 615 S.W.3d at 675-76. The court of appeals did not dispense with the requirement in subsection (f) that a discharge be done pursuant to art 42A.701. Instead, the court of appeals found that art. 42A.701 sets out two types of discharges: permissive and mandatory. *Id.* However, this characterization does not answer whether the discharge was done under art. 42A.701.

The court of appeals characterized Appellee's discharge as being a "mandatory" discharge under art. 42A.701(e). But, a "mandatory" discharge under art. 42A.701(e) still requires that the defendant satisfactorily complete the terms and conditions of his or her supervision. TEX. CODE CRIM. P. Art. 42A.701(e) ("On the satisfactory fulfillment of the conditions of community supervision and the expiration of the period of community supervision..."). The court of appeals ignored the requirement that a defendant satisfactorily fulfill – or even simply fulfill – the terms and conditions of supervision.

The court of appeals omission fails to account for all types of discharges that may occur at the end of a defendant's supervision. For example, if a defendant fails to satisfactorily fulfill the terms and conditions of his or her community supervision, the court may revoke or extend his or her supervision period. *See*, TEX. CODE CRIM. P. Arts. 42A.751 & 42A.753. The trial court may also decide to take no action. If the trial court does so, the defendant's supervision will terminate at some point. The supervision will

discharge, eventually, due to the natural expiration of the supervision period.¹¹ This does not, however, mean that the defendant satisfactorily fulfilled their terms and conditions. In Appellee’s case, the discharge form indicates that “[t]he period having expired, defendant is **discharged** by operation of law.” (C.R. 53)(bold in original). There is nothing in the record to indicate that Appellee was discharged for satisfactorily fulfilling her terms and conditions. Instead, the record demonstrates that Appellee’s discharge was due to the natural expiration of her supervision period. There are sections of the discharge form in which the trial court could have found that Appellee satisfactorily fulfilled her terms and conditions, but it did not. Appellee never claimed that she had satisfactorily fulfilled her terms and conditions.

By ignoring the satisfactory fulfillment requirement of subsection (e), the court of opinion makes all discharges eligible for clemency under subsection (f). If this was the correct reading then there would be no reason for subsection (f) to state “[i]f the judge discharges the defendant under this article...” See, TEX. CODE CRIM. P. Art. 42A.701(f). Instead, subsection (f) would simply say “when the judge discharges the defendant..”

Nonetheless, the court of appeals also went on to find that the trial court made implied findings that Appellee satisfactorily fulfilled her terms and conditions. *Brent*,

¹¹ The court of appeals faulted the State for not citing to authority that a defendant’s supervision may terminate after the natural expiration of its duration. *Brent*, 615 S.W.3d at 676. It is self-evident that, unless there is an extension or revocation/adjudication, a defendant’s supervision ends upon the expiration of its duration – regardless of a defendant’s compliance. Regardless, some offenses are exempt from art. 42A.701 under subsection (g); supervisions for those offenses still have durations that expire, after which the defendant is discharged, regardless of an independent source for the discharge.

615 S.W.3d 676. The court of appeals based that on the “express finding” that Appellee was rehabilitated. *Id.*; *see also*, (C.R. 67). But the record contains no evidence to support that finding.

To the extent that the trial court may have made implied findings that Appellee satisfactorily fulfilled her terms and conditions, there is nothing in the record that speaks to how Appellee fared on her community supervision. The only thing that the record shows is that she was discharged because the supervision period was over. (C.R. 53); *see also*, *Ross*, 32 S.W.3d at 855 (findings must be rooted and supported in the record). The trial court made no mention at all about Appellee’s supervision history to indicate that she had any knowledge to even make a finding about Appellee’s fulfillment of the terms and conditions.

A factual finding of Appellee’s rehabilitation is separate and apart from her conduct while supervised. In fact, the trial court and court of appeal’s policy argument relied on the notion that satisfactory completion did not indicate rehabilitation. Both support their jurisdictional finding by claiming that a defendant’s post-discharge conduct was determinative of rehabilitation. (R.R. III 05-07); *Brent*, 615 S.W.3d at 674-75. If Appellee had satisfactorily fulfilled her terms and conditions the trial court would have been well-aware of whether Appellee was rehabilitated by the time of discharge. And, at the time that Appellee was discharged, the trial court determined that she was not.

Appellee’s discharge was ineligible for clemency under art. 42A.701(f). There is

nothing in the record to indicate that Appellee satisfactorily fulfilled her terms and conditions. There is nothing in the record to support an implied finding of the same. The court of appeals erred in finding there was.

CONCLUSION & PRAYER FOR RELIEF

The court of appeals erred in finding that trial courts possess unlimited jurisdiction to grant judicial clemency and erred in finding that Appellee's discharge was eligible for judicial clemency. The State respectfully requests that this Court REVERSE the opinion and judgment of the court of appeals.

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